

ATTORNEY INSTRUCTIONS
Consumer Privacy Ombudsman/ Patient Care Ombudsman/
Disposal of Patient Records

Consumer Privacy Ombudsman – 11 U.S.C. § 332

Under 11 U.S.C. § 363(b)(1), the Trustee (or Debtor) may sell personal identifiable information about individuals (i.e. consumer lists). If the Debtor had (or has) a privacy policy that prohibits the sharing of this information to an unaffiliated entity, and the proposed sale is in violation of the stated policy, § 363(b)(1)(B) requires the appointment of a consumer privacy ombudsman (“CPO”) and notice and hearing. Under §332, the CPO must be appointed by the UST no later than 5 days before commencement of hearing. The ombudsman is required to provide the court specific facts of the case to assist it in considering the sale or lease of personally identifiable information.

New or Amended Federal Rules to Implement Requirement: FBR 2002(c)(1) requires a notice of sale, and the debtor/trustee must state whether the sale is consistent with a policy prohibiting the transfer of the information. FBR 6004 requires the debtor/trustee to file a motion requesting: (1) the authority to sell the personally identifiable information; and (2) if the sale is inconsistent with the debtor’s privacy policy, requesting an order directing the UST to appoint a CPO. The CPO shall be appointed at least 5 days before the scheduled hearing and an affidavit of disinterestedness (similar to Rule 2014 affidavit) must be filed with Notice of Appointment.

Appointment of Patient Care Ombudsman in a Health Care Business Case – 11 U.S.C. § 333

The appointment of a Patient Care Ombudsman (PCO) is required within thirty days of the commencement of a chapter 7, 9, or 11 action if the debtor is in the health care business, i.e. the Debtor checks the box on the Form B1 (Voluntary Petition).

- 1. Amended Official Forms to Implement Requirement:** Form B1 Voluntary Petition - to include a check box to identify filer as a health care business.
- 2. New or Amended Federal Rules to Implement Requirement:** FBR 1021, 2007.2, 2015.1, 2015.2
- 3.** UST or party-in-interest may file a Motion within 20 days of case commencement stating PCO is not necessary.
- 4.** PCO’s first report to the Court is due within 60 days of appointment

Disposal of Patient Records – 11 U.S.C. § 351

The amendment to the Code requires that if a health care business provider commences a case under chapter 7, 9, or 11, and if the trustee is unable to pay for the storage of patient records as required by Federal Law, he/she shall give notice of their intent to destroy such documents. The amendment adds specific provisions for the disposal of patient records in a bankruptcy case.